

IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

COMPLETE TITLE OF CASE

FEDERAL NATIONAL MORTGAGE ASSOCIATION and NATIONSTAR MORTGAGE,
LLC,

Appellants,

v.

JEFFREY A. CONOVER, et al.,

Respondents.

DOCKET NUMBER WD76276
(Consolidated with WD76347)

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: January 14, 2014

APPEAL FROM

The Circuit Court of Clay County, Missouri
The Honorable Karen Krauser, Judge

JUDGES

Division Two: Pfeiffer, P.J., and Ellis and Howard, JJ.

CONCURRING.

ATTORNEYS

Benjamin F. Mann and Christopher C. Miles, Kansas City, MO
Thomas C. Walsh and John J. Schoemehl, St. Louis, MO

Attorneys for Appellants,

Gregory Leyh, Gladstone, MO

Attorney for Respondents.



MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

FEDERAL NATIONAL MORTGAGE)	
ASSOCIATION and NATIONSTAR)	
MORTGAGE, LLC,)	
)	
Appellants,)	OPINION FILED:
v.)	January 14, 2014
)	
JEFFREY A. CONOVER, et al.,)	
)	
Respondents.)	

WD76276 (Consolidated with WD76347)

Clay County

Before Division Two Judges: Mark D. Pfeiffer, Presiding Judge, and Joseph M. Ellis and Victor C. Howard, Judges

The Federal National Mortgage Association (“Fannie Mae”) and Nationstar Mortgage, LLC (“Nationstar”), appeal the “final judgment” of the Circuit Court of Clay County, Missouri (“trial court”), dated February 11, 2013, (1) granting summary judgment to Jeffrey and Angela Conover (“the Conovers”) in their wrongful foreclosure/quiet title claim against Fannie Mae and Nationstar and (2) dismissing Fannie Mae’s unlawful detainer petition and Fannie Mae and Nationstar’s wrongful foreclosure/quiet title counterclaim.

In the dispositive point, Fannie Mae and Nationstar assert that the trial court erred in granting the Conovers’ motion for summary judgment in the wrongful foreclosure action because Nationstar held the negotiable Note executed by the Conovers, was the legal assignee of the Deed of Trust, and had the power to appoint the successor trustee. Fannie Mae and Nationstar further claim that the successor trustee conducted a valid foreclosure sale that conveyed good title to Fannie Mae in accordance with the provisions of the Note, Deed of Trust, and Article 3 of the Missouri Uniform Commercial Code.

The Conovers contend that its summary judgment motion raised a narrow issue concerning the Deed of Trust’s power of appointment of a successor trustee. They argue that because Nationstar was not the Conovers’ “Lender,” but nonetheless appointed the successor

trustee, the failure to comply with the terms of the Deed of Trust's power of sale provision voids the successor trustee's sale and deed transfer to Fannie Mae.

REVERSED AND REMANDED.

Division Two holds:

Under Missouri law, because the note and deed of trust are inseparable, the holder of a note is entitled to enforce the deed of trust securing that note. When viewing the disputed facts in the light most favorable to the nonmovants, Nationstar was a holder of the Note, succeeded to all rights and interests under the Note and Deed of Trust, and had the authority to enforce the Note and Deed of Trust against the Conovers and to appoint the successor trustee to conduct the trustee's sale and to deliver the trustee's deed. The trial court erred in granting summary judgment to the Conovers on the basis that the successor trustee was not properly appointed.

Opinion by: Mark D. Pfeiffer, Presiding Judge

January 14, 2014

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